

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

POLYMER TECHNOLOGY SYSTEMS,
INC.

Plaintiff,

v.

ROCHE DIAGNOSTICS CORPORATION,
ROCHE DIAGNOSTICS GMBH, ROCHE
DIAGNOSTICS OPERATIONS, INC.,
ROCHE OPERATIONS LTD.,

Defendants.

In light of this filing, Plaintiff's
motion to seal [Docket No. 20] is
denied as moot.

Tim A. Baker
U.S. Magistrate Judge
March 17, 2010

Case No. 1:10-CV-0061 LJM-TAB

**JOINT SUBMISSION IN RESPONSE TO THE COURT'S ORDER ON FEBRUARY 24,
2010 TELEPHONIC STATUS CONFERENCE**

In this patent declaratory judgment action, Plaintiff has filed a motion to seal certain pleadings, and the Roche Defendants filed a response to that motion requesting additional relief. Following the telephonic status conference with the Court on February 24, 2010, the parties have conferred concerning the pending motion and Roche's response thereto, as well as next steps with respect to the sealing issue. The parties have agreed to withdraw both the pending motion to seal those documents which have, to date, been publicly filed with the Court in this action, and Roche's response thereto. Accordingly, there is no need for the Court to decide the motion. However, the Roche Defendants reserve all of their rights with respect to their allegations concerning the public filing of confidential information by Plaintiff, and Plaintiff reserves all of its defenses to these allegations.

While not attempting to unring the bell with respect to public filings that have already been made, Roche's position with respect to future filings is as follows: As it informed the Court during the February 24 telephonic conference, Roche intends to move to dismiss this case in

favor of arbitration. In connection with the briefing on the motion to dismiss, Roche will likely request that the Court permit temporary sealing of only those portions of the briefing that contain further confidential disclosures until such time as the motion is ruled upon.

Roche believes that this solution is consistent with the decision of then Chief Judge Hamilton in *Walker v. Gore*, No. 1:08-cv-0549-DFH-WTL, 2008 WL 4649091, at *2 (S.D. Ind. October 20, 2008). In that case, despite noting that “Defendants are swimming against the current” in terms of Seventh Circuit precedent, the Court agreed to continue sealing the complaint where the defendants argued that they intended to move to dismiss in favor of arbitration, at least until the motion to dismiss was ruled on. The Court explained its ruling by noting that “the parties agreed to private arbitration of their disputes. At least at this very early stage of the litigation, it is reasonable to enforce the parties’ promises to preserve confidentiality and arbitrate disputes.” *Id.*

Roche will file its motion to dismiss on March 11, 2010. While there is no need for the Court to rule until specific requests to seal are made in the context of the briefing, Roche respectfully requests the Court’s favorable consideration of this limited and interim protection.

Plaintiff takes no position at this time and will respond as appropriate if and when any further request to seal is made by Roche. Plaintiff has authorized counsel for Roche to file this submission on behalf of all parties.

Respectfully submitted,

/s Nancy G. Tinsley

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on this 5th day of March, 2010, a copy of the foregoing JOINT SUBMISSION IN RESPONSE TO THE COURT'S ORDER ON FEBRUARY 24, 2010 TELEPHONIC STATUS CONFERENCE was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s Nancy G. Tinsley

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